

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DOVER PROFESSIONAL FIRE OFFICERS
ASSOCIATION

and

CITY OF DOVER, NEW HAMPSHIRE

CASE NO. F-0117

DECISION NO. 80003

APPEARANCES

Representing the Dover Professional Fire Officers Association:

Douglas C. Gray, Esquire

Representing the City of Dover, New Hampshire:

David F. Bibber, Chief
Scott F. Woodman, City Attorney
Robert D. Steele, City Manager

BACKGROUND

The above case was brought before the Public Employee Labor Relations Board (hereinafter Board) by petition of the Dover Professional Fire Officers Association (hereinafter DPFOA) on November 2, 1978, seeking an election to represent all officers of the department in collective bargaining. The petition was accompanied by separate signature cards from over thirty (30%) percent of the officers wishing to be represented by DPFOA.

The Petitionee, the City of Dover (hereinafter City) was notified at the time of the original filing, November 2, 1978, by notice to the then acting City Manager, Charles D. Reynolds. Notification was acknowledged by City Manager Robert D. Steele on November 6, 1978 and the following exceptions filed to the petition.

- (1) "Assistant Chief Richard Hughes, Deputy Chief Norman Allard and Deputy Chief Ovid Taylor cannot be included as 'Public Employees' under RSA 273-A:1, IX, (c), as their duties do imply a confidential relationship to the public employer."
- (2) "Captain John Gregoire, Captain Lon Cheney and Lieutenant Parks L. Christenbury, cannot be included as 'Public Employees' under RSA 273-A:1, IX, (d) as they are all serving in probationary status in their present positions."

The City also submitted that with the "ineligibility" of the above members, DPFOA then dropped to four (4) members and could not meet the minimum requirements under the law, RSA 273-A:8, Section "d".

DPFOA at the time of filing was being represented by Attorney Robert Temple of Fisher, Parsons, Moran & Temple of Dover, who requested the petition be held in abeyance until such time as the parties could either reach agreement on the unit or sought PELRB assistance to determine the appropriate unit. No agreement was reached between the parties and a hearing was set for January 31, 1979, however upon request from DPFOA's legal counsel who stated that changes in the department, reduction in force, etc. would necessitate a delay, the Board agreed to postpone the hearing until notified.

On June 15, 1979, Attorney Douglas C. Gray informed the Board that he was currently representing DPFOA and requested a unit determination hearing be scheduled.

Hearing was held for the purpose of determining the appropriate unit on September 6, 1979 in the Board's office in Concord.

The City again took exception to the inclusion of the Assistant Chief and the Deputy Chiefs, however, dropped their second objection to the probationary employees as the employees in question were no longer probationary. In addition, the City stated that the position of Assistant Chief had now been deleted and one captain had been promoted to Deputy Chief and his position (captain) had been discontinued, thereby reducing the eligible number to nine (9) and still less than the minimum requirement prescribed by law.

The City presented in evidence a copy of the Merit and Classification Plans for personnel of the City of Dover which became effective on September 22, 1978 and established rules and regulations applicable to employees of the City not covered by collective bargaining.

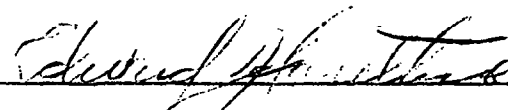
FINDINGS OF FACT

1. RSA 273-A clearly grants to professional and supervisory personnel the right to be represented for the purpose of collective bargaining providing they do not belong to the same unit as the employees they supervise.
2. The deputy chiefs do serve in a professional and supervisory capacity and are entitled to be a part of the bargaining unit which is designed to encompass all the supervisory officers of the department.
3. Although the deputy chiefs have some authority, in the interest of the employer, it would appear that the exercise of such authority is under the supervision of the Chief and not unlike that of the captains and lieutenants.
4. The Board accepts that there is a confidential relationship between the Chief and his deputies, however, the confidentiality aspect does not fall within the field of labor relations. The deputies would not of necessity have knowledge or access to information relating to collective bargaining and therefore their membership in or representation by the Dover Professional Fire Officers Association with the captains and lieutenants would not be incompatible with their official duties.

DECISION AND ORDER

After careful review of the evidence and testimony presented at the September 6, 1979 hearing, the Board rules as follows:

- A. A bargaining unit is hereby created composed of all full-time officers; namely, deputy chiefs, captains and lieutenants of the Dover Fire Department.
- B. A pre-election conference and election will be scheduled in accordance with the Board's rules.



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 17th day of January, 1980

By unanimous vote of the Board, Chairman Haseltine presiding, members Cummings, Mayhew, Moriarty and Anderson present and voting. Also present, Executive Director Evelyn C. LeBrun.